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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

11 FRANK MILFORD PECK,  
12 Petitioner,  
13 vs.  
14 WARDEN NEVEN, *et al.*,  
15 Respondents

2:05-cv-1158-RLH-PAL

## ORDER

17 In this action on a petition for writ of habeas corpus, Frank Milford Peck, a prisoner at  
18 Northern Nevada Correctional Center, has filed a motion for a preliminary injunction (Docket #72),  
19 seeking to enjoin the prison officials from confiscating his typewriter pursuant to a new policy  
20 prohibiting inmates from possessing typewriters.

21 A preliminary injunction is an extraordinary remedy, and the right to relief must be  
22 both clear and unequivocal before a court will grant an injunction. *See Schrier v. University of CO*,  
23 427 F.3d 1253, 1258 (10<sup>th</sup> Cir. 2005). A request for injunctive relief that goes beyond simply  
24 maintaining the status quo, “is particularly disfavored, and should not be issued unless the facts and  
25 law clearly favor the moving party.” *Anderson v. United States*, 612 F.2d 1112, 1114 (9<sup>th</sup> Cir. 1979),  
26 *See Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319-20 (9<sup>th</sup> Cir. 1994). A preliminary injunction will

1 only be granted if the requesting party demonstrates either: (1) a combination of probable success on  
 2 the merits and the possibility of irreparable harm; or (2) the existence of serious questions going to  
 3 the merits and the balance of hardships tips sharply in favor of the requesting party. *LGS Architects,*  
 4 *Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1155 (9<sup>th</sup> Cir. 2006); *Sony Computer*  
 5 *Entertainment Am., Inc. v. Bleem, LLC*, 214 F.3d 1022, 1025 (9<sup>th</sup> Cir. 2000). The two formulations  
 6 represent a sliding scale where the degree of irreparable harm required increases as the probability of  
 7 success decreases. *Id.* A movant with questionable claims does not meet the likelihood of success  
 8 criterion. *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 340  
 9 (1999).

10 In this case, the facts and law do not favor petitioner. Petitioner's claim of being  
 11 deprived of his typewriter challenges the conditions of his confinement, not the fact or duration of  
 12 that confinement. Challenges to conditions of confinement are not to be raised in federal habeas  
 13 corpus proceedings, but rather, are more appropriately raised in a civil rights action filed pursuant to  
 14 42 U.S.C. § 1983. *See Heck v. Humphrey*, 512 U.S. 477, 481 (1994); *see also Badea v. Cox*, 931  
 15 F.2d 573, 574 (9<sup>th</sup> Cir. 1991); *Crawford v. Bell*, 599 F.2d at 891-92 (9<sup>th</sup> Cir. 1979). Moreover,  
 16 plaintiff has not demonstrated that he is subject to irreparable harm, or that he is likely to succeed on  
 17 the merits of his claim regarding deprivation of his typewriter. Petitioner concedes in his motion that  
 18 the policy prohibiting typewriters is in response to security concerns stemming from the misuse of  
 19 typewriters by one or more inmates. Petitioner's motion for an injunction will be denied.

20 **IT IS THEREFORE ORDERED** that petitioner's motion for a preliminary  
 21 injunction (Docket #72) is **DENIED**.

22 DATED this 15<sup>th</sup> day of February, 2008.

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 25 ROGER L. HUNT  
 26 Chief United States District Judge